## REMARKS

This is in full and timely response to the non-final Office Action mailed February 3, 2004, submitted concurrently with a Petition for Extension of Time to within the second extended month. No amendments to the specification or the claims are made. Claims 16-25 remain pending in this application, with claims 16-18 being independent.

Applicant thanks the examiner for acknowledging that claim 18 is allowed, and that claim 20 is allowable. However, as Applicant believes that all pending claims are currently allowable, Applicant respectfully declines to place claim 20 in independent form at this time.

**Rejections Under Obviousness-Type Double-Patenting:**

Claims 16-17, 19 and 21-25 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 13 of U.S. Patent No. 6,616,760 to Kitano et al. in view of U.S. Patent No. 6,383,948 to Kitano et al. and U.S. Patent No. 6,673,155 to Nagashima et al. Applicants respectfully traverse this rejection.

Applicants not that this rejections is improper for the following reasons, and accordingly, withdrawal of this rejection is requested.

First, Applicant notes that this application is a divisional application of now U.S. Patent No. 6,616,760 to Kitano et al. In Kitano et al. 760, the examiner issued a Restriction Requirement under 35 U.S.C. §121 in which Group I was for claims 1-15, Group II was for claims 16-18, and Group III was for claims 19-23. Accordingly, it is improper for the examiner to now say that the claims in Groups II and III are obvious over any claim contained in Group I. Claim 13 of Kitano et al. '760 is original dependent claim 13 placed in independent form by combining with original claim 1. Claim 16 contains additional elements not in original claim 16. Claim 17 was not amended. Accordingly, the doctrine of obviousness-type double patenting is misapplied, and therefore improper, and a terminal disclaimer is an inappropriate remedy.

Still further, as recited in the MPEP at §804, when determining "whether a proper basis exits to enter a double patenting rejection, the examiner must determine...whether a double patenting rejection is prohibited by the third sentence of 35 U.S.C. 121..." The third sentence of 35 U.S.C. 121 recites "A patent issuing on an application with respect to which a requirement for restriction

under this section has been made, or on an application filed as a result of such a requirement, ***shall not be used as a reference either in the Patent and Trademark Office*** or in the courts against a divisional application or against the original application or any patent issued on either of them, if the divisional application is filed before the issuance of the patent on the other application." (emphasis added) Accordingly, this rejection is improper, and must be withdrawn.

Still further, the MPEP states that "Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is **not patentably distinct** from the subject matter claimed in a commonly owned patent..." See MPEP §804, emphasis in the original. The parent application Kitano et al. '760 was subject to a restriction requirement that declared three groups of claims as separate and distinct invention. There is a clear prohibition of this type of double patenting rejection. See MPEP §804.01. Accordingly, this rejection is improper and must be withdrawn.

Still further, the stated rejection applies 3 separate references. Since the obviousness-type double patenting rejection requires that the application claim be "not patentably distinct" from "claimed subject matter", that is, the language of the claim in the patent, NOT the specification of the patent, applying additional references in improper. Accordingly, the rejection must be withdrawn.

Still further, the examiner has de facto withdrawn the restriction between previously identified Groups II and III by virtue of declaring that they are not patentably distinct from each other, and that there is at least no burden to examining these claims together.

Still further, Applicant notes that all of the applied references were commonly owned at the time the invention was made. This is readily evident by the fact that all of the references were concurrently co-pending applications.

For at least all of the reasons discussed above, the rejection is improper, and must be withdrawn. Accordingly, withdrawal of this rejection is requested.

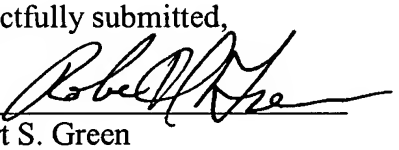
## CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. KPO-164/DIV from which the undersigned is authorized to draw.

Dated: June 10, 2004

Respectfully submitted,

By 

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